

**MINUTES SILVER CREEK TOWNSHIP
ZONING BOARD OF APPEALS HEARING HELD ON APRIL 3, 2019**

VARIANCE REQUEST BY LORI AND DON DALDEGAN

Chairman Jean Rowe called the Zoning Board of Appeals Hearing to order at 7:00 p.m. on Wednesday, April 3, 2019. The Pledge of Allegiance to the Flag of the United States of America was recited.

MEMBERS PRESENT: Dave Grabemeyer, Jean Rowe, Bruce Nevins, Mike Glynn, Adele Straub

OTHERS PRESENT: Recording Secretary Lindsay Krohne, Building/Zoning Administrator Todd Herter, members from the public

ABSENT: None

**APPROVAL OF MARCH 20, 2019 ZONING BOARD OF APPEALS MINUTES AND
MARCH 21, 2019 ZONING BOARD OF APPEALS ORGANIZATIONAL MEETING
MINUTES**

Mike Glynn motioned to approve the March 20, 2019 Zoning Board of Appeals Hearing minutes and the March 21, 2019 Zoning Board of Appeals Organizational Meeting Minutes. Dave Grabemeyer seconded. Motion passed by voice vote.

PUBLIC HEARING

Chairman Jean Rowe read the Notice of Public Hearing, which explained the variance request:

- The request of Lori Jean and Don Daldegan, 540 W. Webster #1204, Chicago, IL respecting their property addressed as 33308 Inn-D-Inn Dr. “Tract 2”, Dowagiac, MI 49047 (Parcel No. 14-130-031-107-03) in the Waterfront District Zoning Classification for a 2-foot variance from each of the required 7-foot side yard setbacks for lots greater than 40’ in width in order to permit construction of a new house 5 feet from each side property line. The side yard setback standards for the Lake Residential District Zoning Classification are contained in Section 155.079 of the Silver Creek Township Zoning Ordinance. Standards of review for the Zoning Board of Appeals are contained in Section 155.253 of the Zoning Ordinance.
- Such other and further matters as may properly come before the zoning board of appeals.

BUILDING/ZONING ADMINISTRATOR COMMENT

Building/Zoning Administrator Todd Herter referred to Section 155.079 Waterfront District, D. District Regulations, 1: Side yard setbacks of lots greater than 40’ in width shall be 7’. Todd stated that the lot is 64’ at the widest point, 60.4’ at the narrowest point, and 264’ in depth at the shortest distance. Todd stated that the lot is flat. He explained that the applicant could have the house narrower on each side and extend the house out to accommodate for the square footage

they want. Todd stated it is his opinion to uphold the zoning ordinance and deny the request as it does not meet practical difficulty.

PUBLIC COMMENT

There was no applicant present to speak at the opening of public comment.

There were no comments in favor of the variance request.

Mike Marous of 33324 Inn D Inn Drive stated that his family owns the adjoining 60' lot to the west. Mr. Marous stated that he supports Todd Herter's statement. Mr. Marous also stated that he has an issue with the storm water in the back, and the whole area across the road is currently under water.

Bob Blum of LRC Group arrived and introduced himself as the applicant's builder. Mr. Blum stated that the lot at the lakeside is within code for the setback requirements. He stated that when the property owner bought the property, they didn't realize the width at the lake side and the width and the road side were different. Mr. Blum added that the walls of the building are within the 7' setback, but the soffit and fascia are 1.5' into the setback, not in conformance with the ordinance.

COMMUNICATIONS

Adele Straub read a letter received from adjacent property owner Kim Seyforth, of 3308 Inn D Inn Drive, stating her concern over the variance request. She stated in her letter that her home is currently in the process of being constructed, and the home planning was done with special consideration to fit within the zoning setbacks and complement the existing nearby and surrounding homes. Ms. Seyforth's letter stated that maneuvering lawn and landscaping equipment, as well as beach and lake toys within the 5 feet would be extremely challenging without accessing the adjacent lots. Ms. Seyforth also stated her concern that the placement of the garage would allow for the displaced wetland water to potentially flood their existing garage. Adele noted that there were two photos included, which were viewed by Zoning Board of Appeals members.

Bob Blum stated that the concern is for the garage across the street, which they were not asking for a variance for. He added that the garage is conforming according to the ordinances, including all setbacks. Mr. Blum stated that any dispersing of water from that particular area would not be on anyone else's property but their own. Mr. Blum added that the front area of the lakeside is in conformance, but the street side would not be in conformance.

Applicant Dan Daldegan stated that the house would be in conformance for the vast majority of the length of the lot, but the property line starts to narrow going toward the street, requiring a foot and a half variance. Dan added that the exterior walls are not in the 7 foot setback.

Jean Rowe closed the floor for public comment at 7:20 p.m.

COMMISSION MEMBER DISCUSSION

Bruce Nevins stated that he keeps hearing a foot and half, but thought they were considering more than that. Mr. Blum stated that it is actually 1' 8" on each side.

Jean Rowe stated that it is difficult for her to envision the shape, because she couldn't find the zoning flags, and could not find the address since it wasn't marked.

Adele Straub referred to the plans showing a detached garage on the other side of the street and questioned if the proposed home will have an attached garage. Mr. Blum answered that there would be an attached one car garage.

Mr. Blum stated that it is difficult to vision because there is an empty lot the west side, and the east side is current an empty lot other than the box foundation that is in place.

Mike Glynn asked who Michelle Scott is, since she is the one who filled out the application. Dan Daldegan answered that she is a friend of the family and real estate agent who is helping with the planning of the home. Mike asked if they were aware of the setback requirements when making the application, and Mr. Blum answered yes, but they were not aware prior to the design of the home, due to the discrepancy between the real estate survey and the actual survey.

Mike Glynn referred to the application, which stated property dimensions of 64.3x326.6x68.3 and questioned the accuracy. Discussion followed. Mr. Blum stated that the property is not rectangular but pie shaped.

Mike asked Mr. Blum if Todd Herter explained the standard of the difficulty of building and not complying with our zoning ordinance, and he answered yes. Mike asked Mr. Blum to explain in his own words where the difficulty arose, in using the property for it's intended use, not necessarily just wanting to build a house bigger than what the setbacks allow. Mike added that the other property owner has complied, and his proposed home does not comply even though the properties are very similar.

Mr. Blum stated that unfortunately, they were not aware prior to the design, or even at the sale of the property. He stated that after the sale of the property and the design of the home, the actual survey depicted the difference in the width of the property at the road side and the lake side.

Mike Glynn questioned Mr. Blum if they had explored other alternatives that would allow them to comply with the zoning ordinance setbacks, and still get a useful structure that his customer would desire. He answered that the only other obvious alternative would be to decrease the width of the building.

Mike Glynn referred back to the application, stating that it is obviously wrong and paints a more favorable picture of the width at 64' when the survey says 60'.

Mr. Blum answered that there should have been two dimensions given, 64' at the lakeside and 60' at the road side dimension 60. Discussion followed. Mike Glynn asked for clarification on the size of the proposed home. After much discussion, Mr. Blum answered that the outside

dimension of the proposed home is 48' wall to wall, plus a 1'8" overhang on each side, which he rounded to 2' on each side. It was agreed that the applicant was actually seeking a one foot variance on each side rather than two feet.

Jean Rowe read the Standards of Review for a Non-Use Variance:

155.253 STANDARDS OF REVIEW.

(A) *Granting of non-use variances.* A non-use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of practical difficulty in the official record of the hearing and that all of the following conditions are addressed.

(1) The variance will not be significantly detrimental to adjacent property and the surrounding neighborhood.

Jean Rowe stated she believes it would be too tight. Adele Straub stated that she doesn't think one foot variance on each side would be significantly detrimental. Mike Glynn stated that setbacks make good neighbors, and it would be detrimental to the neighbors.

(2) The variance will not impair the intent and purpose of this chapter.

All members agreed it would impair the intent and purpose of this chapter.

(3) The immediate practical difficulty causing the need for the variance request was not created by any action of the applicant or predecessor.

All members agreed the practical difficulty causing the need for the variance request was created by action of the applicant.

(4) The variance requested is the variance necessary to meet the purpose and intent of the chapter and to meet the other standards of review in this section.

Dave Grabemeyer answered no, and Mike Glynn answered no, stating that it does not meet the intent and other standards of review in the section.

(5) Would a lesser relaxation than applied for give substantial relief to the owner of the property involved and be more consistent with justice to other property owners, and whether relief can be granted in such fashion that the spirit of the chapter will be observed and public safety and welfare secured.

All members answered no.

MOTION TO DENY VARIANCE REQUEST

Mike Glynn motioned to uphold the findings of Todd Herter and deny the variance request. Jean Rowe seconded.

Motion passed by roll call vote:

Yes (5): Dave Grabemeyer, Jean Rowe, Bruce Nevins, Mike Glynn, Adele Straub

No (0): None.

Absent (0): None

Jean Rowe asked the applicant to wait for a copy of the signed application.

ADJOURNMENT

Jean Rowe adjourned the meeting at 7:50 p.m.

Respectfully submitted,

Lindsay Krohne

Recording Secretary

To be approved at the next Zoning Board of Appeals meeting

Adele Straub, Secretary